

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
IN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APO/160/ 2023
With
WPO/1149/2022
IA No.GA/2/2024**

**JANAB SYED ASGHAR HUSSAIN ISMAIL
Versus
M/S. HOOGHLY BUILDING AND INVESTMENT COMPANY
LIMITED AND ORS.**

**APO/161/ 2023
IA No.GA/3/2024**

**JANAB SYED ASGHAR HUSSAIN ISMAIL
Versus
M/S. HOOGHLY BUILDING AND INVESTMENT COMPANY
LIMITED AND ORS.**

Present :
The Hon'ble Justice Debangsu Basak
-And-
The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Raut Rahim, Sr. Adv.*
Mr. Arindam Banerjee, Sr. Adv.
Ms. Priyanka Gope, Adv.

For the KMC : *Mr. Ashok Kumar Ghosh, Adv.*
Mr. Gopal Chandra Das, Adv.
Mr. Debangsu Mondal, Adv.

For the State : *Ms. Tuli Sinha, Adv.*

For the Respondent no.10 : *Md. Salahuddin, Adv.*
Md. Ahsanuzzaman, Adv.
Md. Raziujddin, Adv.

HEARD ON : 07.01.2025
DELIVERED ON : 07.01.2025

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing as they relate to the same writ petition.
2. Both the appeals are at the behest of the Mutwalli of the Wakf Estate.
3. Private respondents in this appeal, as the writ petitioners filed a writ petition being WPO/1149/2022. In such writ petition the private respondents/writ petitioners sought a direction upon the Kolkata Municipal Corporation for acceptance of municipal rates and taxes from the private respondents/writ petitioners in respect of premises No.1, Chitpur Ghat Lane, Kolkata- 700 002. The private respondents/writ petitioners claimed to be in possession of such property. The private respondents/writ petitioners claimed that their names stand mutated in the records of the Kolkata Municipal Corporation in respect of such property and, therefore, Kolkata Municipal Corporation must accept the property rates and taxes of such property from them.
4. The writ petition of the private respondents/writ petitioner was disposed of by a judgment and order dated February 10, 2023.
5. The appellants before us applied for review of the judgment and order dated February 10, 2023 passed in WPO/1149/2022 by way

of RVWO/14/2023. Such review was dismissed by an order dated April 13, 2023.

- 6.** The appellants before us filed two appeals. One appeal being APO/161/2023 is directed against the judgment and order dated February 10, 2023 passed in WPO/1149/2022. The other appeal being APO/160/2023 is against the order dated April 13, 2023 passed in RVWO/14/2023.
- 7.** Appellants, Auqaf Board as also the Corporation authorities are represented.
- 8.** It is contended on behalf of the appellant that there is an eviction proceedings against the private respondent/writ petitioner pending. According to the appellants, private respondent is not entitled to pay the property rates and taxes in respect of the immovable property concerned.
- 9.** None appears for the private respondent/writ petitioner.
- 10.** Facts emanating from the materials placed on record establish that, private respondents/writ petitioners are in possession of a portion of the property concerned. Names of the private respondents/writ petitioners stand mutated in the records of KMC also.
- 11.** Learned Single Judge, by the impugned judgment and order dated February 10, 2023 clarified that the Court was not entering

into the respective civil rights of the private parties with regard to the immovable property concerned. Learned Single Judge allowed the writ petitioners/private respondents to pay the property tax and directed the KMC to accept the same.

- 12.** It would be appropriate to set out the directions issued by the learned Single Judge in the impugned judgment and order dated February 10, 2023 which are as follows:

“In view of the above, the Corporation is directed to accept property tax from the petitioner and issue receipts thereof. There is no requirement of keeping the money paid on account of property tax in the suspense account. The amount paid by the petitioner on account of property tax kept aside in the suspense account, shall be transferred to the appropriate account of KMC where property tax is credited.

Non-payment of property tax in proper time attracts penalty and interest. If ultimately it transpires that the company will be liable to pay tax, then the company will be burdened with penalty and interest for keeping the tax due for such a long period of time. But if the company fails to establish its right over the property, then the petitioners will not be entitled to refund or adjustment of the amount paid on account of property tax as the petitioners have volunteered to accept the liability and pay the same.

The payment and acceptance of tax will not create any right in favour of the petitioners, apart from the rights already enjoyed by them. The status of the property as regards thika

and wakf will be decided by the competent forum in accordance with law.

It is clarified that the Court is not adjudicating the civil rights of either of the parties in the present writ proceeding. The parties will be at liberty to agitate and adjudicate their independent rights before the competent forum, in accordance with law, if so advised.”

- 13.** As noted above, a review petition directed against the judgment and order dated February 10, 2023 was dismissed by the learned Single Judge on April 13, 2023.
- 14.** After hearing the contention of the respective parties, we find that there is a dispute as to who is entitled to pay the property tax in respect of the property concerned. Learned Single Judge permitted the private respondents/writ petitioners to pay the same. Learned Single Judge also clarified that no equity would be created in favour of the writ petitioner/private respondent if such payment is made.
- 15.** It is trite law that mutation in the municipal records does not create any right, title and interest in respect of the persons who is mutated in such records in addition to or apart from the right, title and interest that the assessee otherwise possesses. It is also trite law that payment of municipal rates and taxes does not create any right, title and interest in respect of such property unless the payee

possesses a right, title and interest independent of such payment in respect of such property.

16. In the facts of the present case, civil rights between the private parties were left to be adjudicated before the appropriate forum. We are not interfering with any of the directions of the learned Single Judge. The learned Single Judge also directed that no equity will be created by payment of property tax. We are also not interfering with such direction also.

17. The Corporation cannot receive payment of property tax from whatsoever in respect of same property. In the event the private respondents/writ petitioners are evicted from the property concerned, needless to say, the owner of the property will receive full credit for the payments made by the private respondents/writ petitioners in respect of the property concerned.

18. In view of the discussions above, APO/160/2023 and APO/161/2023 along with all connected applications are disposed of without any order as to costs.

19. Interim order, if any, stands vacated.

(DEBANGSU BASAK, J.)

20. I agree.

(MD. SHABBAR RASHIDI, J.)